

SENATE BILL No. 342

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-4; IC 24-4-13.

Synopsis: Adult oriented businesses. Defines "adult oriented establishment" as a sexual encounter center or an adult cabaret that does not hold a license from the Indiana alcohol and tobacco commission. Creates the adult oriented establishment license. Provides for local control over licensing of adult oriented establishments. Prohibits operation of an adult oriented establishment without an adult oriented establishment license. Requires an employee of an adult oriented establishment to have an adult oriented establishment permit. Provides for fees and penalties. Imposes other requirements.

Effective: July 1, 2003.

Miller

January 15, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 342

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-1-4 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 4. Adult Cabarets**

5 **Sec. 1. This chapter applies only to an adult cabaret that holds**
6 **a license under this title.**

7 **Sec. 2. As used in this chapter, "adult cabaret" means an**
8 **establishment that features as a principal use of its business and**
9 **source of income an entertainer, a member of the wait staff, a**
10 **bartender, or any other employee who exposes to public view of the**
11 **patrons within the establishment, at any time:**

12 **(1) the bare female breast below a point immediately above**
13 **the top of the areola; or**

14 **(2) human genitals, pubic regions, or buttocks, even if**
15 **partially covered by opaque material or completely covered**
16 **by translucent material, including:**

17 **(A) swimsuits;**



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- (B) lingerie; or
- (C) latex covering.

The term includes an establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.

Sec. 3. As used in this chapter, "adult entertainment" means any exhibition of a:

- (1) live performance;
- (2) display; or
- (3) dance;

that has, as a significant or substantial part of the performance, any actual or simulated performance of a specified sexual activity, exhibition and viewing of a specified anatomical area, or removal of articles of clothing or appearing unclothed during pantomime or modeling.

Sec. 4. As used in this chapter, "employee" means a person who performs a service on the premises of an adult cabaret on a full-time, part-time, or contract basis, whether or not the person is:

- (1) denominated an employee, independent contractor, agent, or otherwise; and
- (2) paid a salary, wage, or other compensation by the operator of the business.

The term does not include a person on the premises exclusively for repair or maintenance of the premises or equipment on the premises or for the delivery of goods to the premises.

Sec. 5. As used in this chapter, "entertainer" means a person who provides entertainment within an adult cabaret, whether or not:

- (1) a fee is charged or accepted for entertainment; and
- (2) entertainment is provided as an employee or independent contractor.

Sec. 6. As used in this chapter, "operator" means any person operating, conducting, or maintaining an adult cabaret.

Sec. 7. As used in this chapter, "person" means an individual, a partnership, a limited liability entity, a firm, a corporation, or an association.

Sec. 8. As used in this chapter, "specified anatomical area" means:

- (1) less than completely and opaquely covered human:
 - (A) genitals;
 - (B) pubic regions;
 - (C) buttocks; or

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- 1 (D) a female breast below a point immediately above the
 2 top of the areola; and
 3 (2) human male genitals in a discernibly turgid state, even if
 4 completely opaquely covered.

5 Sec. 9. As used in this chapter, "specified sexual activity"
 6 means:

- 7 (1) human genitals in a state of arousal;
 8 (2) an act of human masturbation, sexual intercourse, or
 9 deviate sexual conduct; or
 10 (3) fondling or erotic touching of human genitals, pubic
 11 regions, buttocks, or a female breast.

12 Sec. 10. (a) The public part of an adult cabaret may be open
 13 only from noon to midnight.

14 (b) The public part of an adult cabaret must be open to
 15 inspection by the commission at all reasonable times.

16 (c) The operator shall maintain a register of all employees,
 17 showing the:

- 18 (1) name;
 19 (2) any alias used by the employee, including performance
 20 names and stage names;
 21 (3) home address;
 22 (4) age;
 23 (5) birth date;
 24 (6) sex;
 25 (7) height;
 26 (8) weight;
 27 (9) color of hair and eyes;
 28 (10) telephone number;
 29 (11) Social Security number;
 30 (12) driver's license number;
 31 (13) date of employment and termination; and
 32 (14) duties;

33 of each employee and other information as may be required by the
 34 commission. The information concerning an employee must be
 35 maintained in the register on the premises for three (3) years after
 36 the employee's termination. Information in the register of
 37 employees is not public information, and the operator shall take
 38 measures to maintain the privacy of the information.

39 (d) At all reasonable times, the operator shall make the register
 40 of employees available for inspection by the commission
 41 immediately upon demand.

42 (e) An act or omission by an employee constituting a violation



of this chapter is considered the act or omission of the operator if the act or omission occurs:

- (1) with the authorization, knowledge, or approval of the operator; or
- (2) as a result of the operator's negligent failure to supervise the employee's conduct.

The operator is punishable for an act or omission in the same manner as if the operator committed the act or caused the omission.

(f) An operator is responsible for the conduct of all employees while an employee is on the licensed premises. Any act or omission of any employee constituting a violation of this chapter is considered the act or omission of the operator for purposes of determining whether the operator's permit may be revoked, suspended, or renewed.

(g) An employee of an adult cabaret may not:

- (1) allow a minor to frequent the adult cabaret; or
- (2) allow a minor to view adult entertainment at the adult cabaret.

(h) Every adult cabaret must be physically arranged so that the interior portions of the booths, cubicles, rooms, or stalls where adult entertainment is provided are visible from the common area of the premises. Visibility may not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction.

(i) The operator of an adult cabaret shall provide that any room or area used to view live entertainment is readily accessible at all times and is continuously open to view in its entirety.

(j) A sign must be conspicuously displayed in the common area of the premises and must read as follows:

"This adult cabaret is regulated by IC 7.1-1-4. Entertainers and employees are:

- (1) Not permitted to engage in any type of sexual conduct.
- (2) Not permitted to expose their sex organs.
- (3) Not permitted to demand or collect all or any part of a fee for entertainment before its completion.
- (4) Not permitted to appear in a state of full nudity."

(k) The operator shall permit the commission to inspect the entire licensed premises of the adult cabaret not less than one (1) time per month.

Sec. 11. (a) An operator, entertainer, or employee of an adult cabaret may not permit:

- (1) sexual intercourse;

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1 (2) oral copulation;
 2 (3) anal copulation; or
 3 (4) any other contact stimulation of the genitalia;
 4 to be performed. This includes the extension of an offer to perform,
 5 performance on a patron, performance by employees or patrons,
 6 or the allowance of a patron to perform.

7 (b) An operator, entertainer, or employee of an adult cabaret
 8 may not encourage or permit any person upon the premises to
 9 touch, caress, or fondle the:

10 (1) breast;
 11 (2) buttocks;
 12 (3) anus; or
 13 (4) genitals;
 14 of any operator, entertainer, or employee.

15 (c) An entertainer, an employee, or a customer shall not be
 16 permitted to have any physical contact with any other entertainer,
 17 employee, or customer on the premises during any performance.

18 (d) A performance by an entertainer or employee may occur
 19 only upon a stage that is:

20 (1) at least eighteen (18) inches above the immediate floor
 21 level; and
 22 (2) removed at least six (6) feet from the next nearest
 23 entertainer, employee, or customer.

24 (e) An employee or entertainer, while on the premises of an
 25 adult cabaret, may not:

26 (1) engage in sexual intercourse;
 27 (2) engage in deviant sexual conduct;
 28 (3) appear in a state of nudity;
 29 (4) fondle the employee's or entertainer's own genitals; or
 30 (5) fondle the genitals of another.

31 (f) An adult cabaret may not advertise that the license holder
 32 offers sexual stimulation, other than visual stimulation, or sexual
 33 gratification.

34 (g) An adult cabaret may not display a sign or advertisement in
 35 public view that:

36 (1) contains a source of illumination;
 37 (2) uses a picture, the silhouette, or any part of a silhouette of
 38 the:
 39 (A) bare female breast;
 40 (B) human genitals;
 41 (C) human pubic region; or
 42 (D) human buttocks; or

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(3) exceeds the size and height restrictions determined by the commission.

Sec. 12. The commission may adopt rules under IC 4-22-2 and procedures to administer this chapter.

SECTION 2. IC 24-4-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 13. Adult Oriented Establishment Licenses

Sec. 1. As used in this chapter, "adult cabaret" has the meaning set forth in IC 7.1-1-4.

Sec. 2. As used in this chapter, "adult entertainment" means any exhibition of an adult oriented:

- (1) motion picture that is found obscene under IC 35-49-2-1;
- (2) live performance;
- (3) display; or
- (4) dance;

that, as a significant or substantial part of the performance, has any actual or simulated performance of a specified sexual activity, exhibition and viewing of a specified anatomical area, removal of an article of clothing or appearing unclothed during pantomime or modeling, or any other personal service offered to customers.

Sec. 3. As used in this chapter, "adult oriented establishment" means:

- (1) a sexual encounter center; or
- (2) an adult cabaret that does not hold a license or permit under IC 7.1.

Sec. 4. As used in this chapter, "employee" means a person who performs any service on the premises of an adult oriented establishment on a full-time, part-time, or contractual basis, whether or not the person is:

- (1) denominated an employee, independent contractor, agent, or otherwise; and
- (2) paid a salary, wage, or other compensation by the operator of the business.

The term does not include a person on the premises exclusively for repair or maintenance of the premises or equipment on the premises or for the delivery of goods to the premises.

Sec. 5. As used in this chapter, "entertainer" means a person who provides entertainment within an adult oriented establishment, whether or not:

- (1) a fee is charged or accepted for entertainment; and
- (2) entertainment is provided as an employee or independent

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1 contractor.

2 Sec. 6. As used in this chapter, "law enforcement official" means
3 the law enforcement agency responsible for enforcement of this
4 chapter in a political subdivision as selected by the executive (as
5 defined in IC 36-1-2-5) of the political subdivision having
6 jurisdiction over adult entertainment.

7 Sec. 7. As used in this chapter, "licensing authority" means the
8 licensing authority designated by the executive (as defined in
9 IC 36-1-2-5) of the political subdivision having jurisdiction over
10 adult entertainment.

11 Sec. 8. As used in this chapter, "nudity" means the showing of
12 the:

- 13 (1) human male or female genitals or pubic area with less than
- 14 a fully opaque covering;
- 15 (2) female breast with less than a fully opaque covering of any
- 16 part of the nipple; or
- 17 (3) covered male genitals in a discernibly turgid state.

18 Sec. 9. As used in this chapter, "operator" means any person
19 operating, conducting, or maintaining an adult oriented
20 establishment.

21 Sec. 10. As used in this chapter, "person" means an individual,
22 a partnership, a limited liability entity, a firm, a corporation, or an
23 association.

24 Sec. 11. As used in this chapter, "sexual conduct" means
25 engaging in or committing an act of sexual intercourse, oral-genital
26 contact, or touching the sexual organs, pubic region, or buttocks of
27 a person for the purpose of arousing or gratifying the sexual desire
28 of another person.

29 Sec. 12. As used in this chapter, "sexual encounter center"
30 means a business or commercial enterprise that, as its primary
31 business purpose, offers for any form of consideration a location
32 for sexual conduct on the premises by individuals who have paid a
33 fee for membership or for participation.

34 Sec. 13. As used in this chapter, "specified anatomical area" has
35 the meaning set forth in IC 7.1-1-4-8.

36 Sec. 14. As used in this chapter, "specified criminal act" and
37 "specified criminal activity" refer to the following criminal
38 offenses:

- 39 (1) Rape under IC 35-42-4-1.
- 40 (2) Criminal deviate conduct under IC 35-42-4-2.
- 41 (3) Child molesting under IC 35-42-4-3.
- 42 (4) Child exploitation under IC 35-42-4-4.

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(5) Possession of child pornography under IC 35-42-4-4.

(6) Vicarious sexual gratification under IC 35-42-4-5.

(7) Child solicitation under IC 35-42-4-6.

(8) Child seduction under IC 35-42-4-7.

(9) Sexual battery under IC 35-42-4-8.

(10) Sexual misconduct with a minor under IC 35-42-4-9.

Sec. 15. As used in this chapter, "specified services" means a private dance, private modeling, or any other live adult entertainment.

Sec. 16. As used in this chapter, "specified sexual activity" has the meaning set forth in IC 7.1-1-4-9.

Sec. 17. (a) An adult oriented establishment must be licensed by a licensing authority.

(b) A license may be issued for one (1) adult oriented establishment located at a fixed and certain place. A person that operates more than one (1) adult oriented establishment must have a license for each adult oriented establishment.

(c) A building, premises, structure, or other facility that contains an adult oriented establishment may not contain any other adult oriented establishment.

(d) A license or an interest in a license may not be transferred.

(e) An entertainer, employee, or operator may not knowingly:

(1) work in or about; or

(2) perform any service directly related to or at the request of the operation of;

an unlicensed adult oriented establishment.

(f) A license may not be issued by the licensing authority unless the applicant certifies, by proof satisfactory to the licensing authority, that the applicant has satisfied the rules, regulations, and provisions of the applicable zoning requirements of the political subdivision.

Sec. 18. (a) A person wants to obtain a license must apply to the licensing authority. A copy of the application shall be distributed promptly to the local law enforcement official.

(b) The application for a license must be on a form provided by the authority. An applicant for a license shall furnish the following information under oath:

(1) Name, including all aliases, and address of the applicant.

(2) Written proof that all individuals employed by the applicant are at least eighteen (18) years of age.

(3) The business, occupation, or employment of the applicant for five (5) years immediately preceding the date of the

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application.

(4) The adult oriented establishment or similar business license history of the applicant. The applicant shall include:

(A) whether the applicant, in previously operating in any county, city, or state under a license, has had the license revoked or suspended;

(B) the reason for revocation or suspension; and

(C) the business activity or occupation subject to the suspension or revocation.

(5) Any conviction for a specified criminal act.

(6) The address of the adult oriented establishment to be operated by the applicant.

(7) If the applicant is:

(A) a corporation, the application must specify:

(i) the name, address, and telephone number of the corporation;

(ii) the date and the state of incorporation;

(iii) the name and address of the registered agent for service of process of the corporation;

(iv) the names and addresses of the officers and directors of the corporation; and

(v) the names and addresses of any person holding at least fifty percent (50%) of the stock of the corporation;

(B) a partnership, the application must specify:

(i) the name and address of the partnership; and

(ii) the names and addresses of all general partners of the partnership; or

(C) a limited partnership, the application must specify the names and addresses of all general partners who have a controlling interest in the partnership.

(8) A statement by the applicant that the applicant is familiar with and in compliance with all laws and regulations governing the operation of an adult oriented establishment.

(c) The licensing authority shall notify the applicant that the application is granted, denied, or held for further investigation not later than ten (10) days after receiving the results of the investigation conducted by the licensing authority or by a local law enforcement official for the licensing authority. Additional investigation may not exceed thirty (30) days from the date of notification unless otherwise agreed to by the applicant. Upon the conclusion of the additional investigation, the licensing authority shall advise the applicant in writing whether the application is

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1 granted or denied.

2 (d) Any of the following constitutes an admission by the
3 applicant that the applicant is ineligible for a license:

4 (1) The applicant's failure or refusal to give any information
5 relevant to the investigation of the application.

6 (2) The applicant's refusal or failure to appear at any
7 reasonable time and place for examination under oath
8 regarding the application.

9 (3) The applicant's refusal to submit to or cooperate with any
10 investigation required by this chapter.

11 (e) An admission by the applicant is grounds for the licensing
12 authority to deny a license.

13 Sec. 19. (a) To receive a license to operate an adult oriented
14 establishment, an applicant must meet the following standards:

15 (1) If the applicant is an individual, the applicant:

16 (A) must be at least eighteen (18) years of age;

17 (B) may not have had a license issued under this chapter
18 revoked within five (5) years immediately preceding the
19 date of the application;

20 (C) may not have been convicted of any violation of this
21 chapter within five (5) years immediately preceding the
22 date of the application; and

23 (D) may not have been convicted of a specified criminal act
24 for which:

25 (i) less than two (2) years has elapsed since the date of
26 conviction if the conviction is for a misdemeanor offense;

27 (ii) less than five (5) years has elapsed since the date of
28 conviction if the conviction is for a felony offense; or

29 (iii) less than five (5) years has elapsed since the date of
30 conviction for two (2) or more misdemeanor offenses
31 occurring within any twelve (12) month period.

32 The fact that a conviction is being appealed has no effect
33 on disqualification of the applicant.

34 (2) If the applicant is a corporation:

35 (A) all officers, directors, and stockholders required to be
36 named under this chapter must be at least eighteen (18)
37 years of age;

38 (B) an officer, a director, or a stockholder required to be
39 named under this chapter may not have had an adult
40 oriented establishment license revoked within five (5) years
41 immediately preceding the date of the application;

42 (C) an officer, a director, or a stockholder required to be

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named under this chapter may not have a conviction for a violation of this chapter within five (5) years immediately preceding the date of the application; and

(D) the applicant or officer, director, or stockholder required to be named by this chapter may not have a conviction for a specified criminal act for which:

- (i) less than two (2) years has elapsed since the date of conviction if the conviction is for a misdemeanor offense;
- (ii) less than five (5) years has elapsed since the date of conviction if the conviction is for a felony offense; or
- (iii) less than five (5) years has elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.

The fact that a conviction is being appealed has no effect on disqualification of the applicant.

(3) If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:

(A) all persons having a financial interest in the partnership, joint venture, or other type of organization must be at least eighteen (18) years of age;

(B) all persons having a financial interest in the partnership, joint venture, or other type of organization may not have had a license issued under this chapter revoked within five (5) years immediately preceding the date of the application;

(C) an applicant or person having a financial interest in the partnership, joint venture, or other type of organization may not have a conviction for a violation of this chapter within five (5) years immediately preceding the date of the application; and

(D) the applicant or any person having a financial interest required to be disclosed may not have a conviction for a specified criminal act for which:

- (i) less than two (2) years has elapsed since the date of conviction if the conviction is for a misdemeanor offense;
- (ii) less than five (5) years has elapsed since the date of conviction if the conviction is for a felony offense; or
- (iii) less than five (5) years has elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.

The fact that a conviction is being appealed has no effect

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1 on disqualification of the applicant.

2 (b) A license may not be issued unless the licensing authority or
3 law enforcement official has investigated the applicant's
4 qualifications to be licensed. The results of the investigation shall
5 be filed in writing with the licensing authority not later than twenty
6 (20) days after the date of the application.

7 (c) An applicant who has been convicted of a specified criminal
8 activity may not be denied a license based on that conviction after
9 the period required in this section has elapsed.

10 Sec. 20. (a) To provide proper administration of this chapter,
11 the licensing authority, its authorized representative, or local law
12 enforcement may:

13 (1) conduct investigations of persons engaged in the operation
14 of any adult oriented establishment; and

15 (2) inspect the licenses of the operator and the establishment
16 for compliance.

17 (b) Refusal of an operation or establishment to permit an
18 inspection is grounds for revocation of a license, suspension of a
19 license, or refusal to issue a license under this chapter.

20 (c) Not later than ten (10) days after receiving the results of an
21 investigation, the licensing authority shall notify the applicant that
22 the application is granted, denied, or held for further investigation.
23 Any additional investigation may not exceed thirty (30) days from
24 the date of notification unless otherwise agreed to by the applicant.
25 Upon the conclusion of the additional investigation, the licensing
26 authority shall advise the applicant in writing whether the
27 application is granted or denied.

28 (d) If an additional investigation is held, after thirty (30) days,
29 the applicant may begin operating the business for which the
30 license is sought unless or until the licensing authority or its
31 authorized representative notifies the applicant of a denial of the
32 application and states the reasons for denial.

33 Sec. 21. (a) The licensing authority may enter into any state
34 court having proper jurisdiction to:

35 (1) seek an injunction against an operator or adult oriented
36 establishment that is not in compliance with this chapter; and

37 (2) enforce this chapter.

38 (b) Any violation of an injunction obtained under this section
39 constitutes contempt with a fine of fifty dollars (\$50).

40 (c) Each day in contempt of an injunction is considered a
41 separate offense.

42 Sec. 22. (a) The licensing authority shall revoke, suspend, or

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annul a license for any of the following reasons:

(1) Discovery that false or misleading information or data was given on any application or that material facts were omitted from any application.

(2) The operator, entertainer, or any employee of the operator violates this chapter or any rule adopted by the authority. However, in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty may not exceed a license suspension of thirty (30) days if the licensing authority finds that the operator had no actual or constructive knowledge of the violation and could not, by the exercise of due diligence, have had actual or constructive knowledge.

(3) The operator becomes ineligible to obtain a license.

(4) A cost or fee required to be paid by this chapter is not paid.

(5) An alcoholic beverage is served or consumed on the premises of an adult oriented establishment that is not licensed by the Indiana alcohol and tobacco commission.

(6) An operator employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit.

(7) An operator, employee, or entertainer sells, furnishes, gives, or displays or causes to be sold, furnished, given, or displayed to any minor any adult oriented entertainment or adult oriented material.

(8) An operator, employee, or entertainer denies access of law enforcement personnel to any part of the licensed premises where adult oriented entertainment is permitted or to any part of the licensed premises where adult oriented material is displayed or sold.

(9) An operator fails to maintain the licensed premises in compliance with the regulations of the department of health.

(10) An operator, employee, or entertainer is convicted of a specified criminal act, if the violation occurred on the licensed premises.

(b) Before revoking or suspending a license or permit, the licensing authority shall give the license holder or permit holder not less than ten (10) and not more than twenty (20) days written notice of the charges against the license holder or permit holder and of the revocation of the license or permit, or of the period the



1 license or permit is to be suspended. The notice must advise the
2 license holder or permit holder of the license holder's or permit
3 holder's right to request a hearing before the licensing authority.
4 If the license holder or permit holder does not request in writing a
5 hearing before the licensing authority within the time stated in the
6 notice, the suspension or revocation is effective beginning on the
7 date stated in the notice.

8 (c) If the license holder or permit holder requests a hearing
9 before the licensing authority to contest the suspension or
10 revocation, the request must be made in writing to the licensing
11 authority not later than ten (10) days after the license holder's or
12 permit holder's receipt of the notification from the licensing
13 authority. If the license holder or permit holder timely requests a
14 hearing, the effective date of a suspension or hearing is stayed
15 pending the final outcome of judicial proceedings to determine
16 whether the license or permit has been properly revoked or
17 suspended under the law.

18 (d) If the license holder or permit holder timely requests a
19 hearing, a public hearing must be held not later than fifteen (15)
20 days after the licensing authority receives the request. The hearing
21 must be before the licensing authority and must allow the license
22 holder or permit holder to present evidence. The authority shall:

23 (1) hear evidence concerning the basis for the suspension or
24 revocation; and

25 (2) affirm or reverse the suspension or revocation at the
26 conclusion of the hearing.

27 (e) The hearing must be concluded not later than twenty-two
28 (22) days after the license holder's or permit holder's receipt of the
29 notification of the suspension or revocation unless an extension
30 beyond that time is requested by the license holder or permit
31 holder and granted by the licensing authority.

32 (f) If the licensing authority affirms the suspension or
33 revocation, the attorney for the licensing authority, or the
34 prosecuting attorney, shall institute suit for declaratory judgment
35 in a court of record in the county not later than five (5) days after
36 the date of an affirmation, seeking an immediate judicial
37 determination of whether the license or permit has been properly
38 revoked or suspended under the law.

39 (g) An operator whose license is revoked is not eligible to receive
40 a license for five (5) years after the date of revocation.

41 (h) The applicant is entitled to prompt judicial review of a
42 license suspension or revocation.

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1 (i) The licensing authority has the burden of showing that a
 2 revocation or suspension of a license under this section is not
 3 arbitrary or capricious.

4 Sec. 23. (a) If an application for the issuance of a license or the
 5 renewal of a license is denied, the licensing authority shall notify
 6 the applicant in writing of the reasons for the action.

7 (b) Notice of denial of an application must advise the applicant
 8 of the applicant's right to request a hearing before the licensing
 9 authority. If the applicant desires to request a hearing before the
 10 licensing authority to contest the denial of an application, the
 11 request must be made in writing to the licensing authority not later
 12 than ten (10) days after the applicant's receipt of the notification
 13 of the denial of the application. If the applicant timely requests a
 14 hearing, a public hearing shall be held not later than fifteen (15)
 15 days after the authority's receipt of a request. The hearing must be
 16 held before the licensing authority. At that time the applicant may
 17 present evidence as to why the application should not be denied.
 18 The licensing authority shall hear evidence concerning the basis for
 19 denial of the application and shall affirm or reverse the denial of
 20 an application at the conclusion of the hearing. A hearing shall be
 21 concluded not later than twenty-two (22) days after the applicant's
 22 receipt of notification of denial of an application unless an
 23 extension beyond that time is requested by the applicant and
 24 granted by the licensing authority.

25 (c) If the licensing authority affirms the denial of an application,
 26 not later than five (5) days after the date of a denial, the county
 27 attorney or the prosecuting attorney shall institute suit for
 28 declaratory judgment in a court of record seeking an immediate
 29 judicial determination of whether the application has been
 30 properly denied under the law.

31 (d) The applicant is entitled to prompt judicial review for the
 32 denial of an application for a license or renewal of a license.

33 (e) The licensing authority has the burden of showing that a
 34 denial of a license under this section is not arbitrary or capricious.

35 Sec. 24. (a) A license issued under this chapter:

36 (1) is valid for one (1) year after the date of issuance, unless
 37 revoked before expiration; and

38 (2) must be renewed before operation is allowed in the
 39 following year.

40 (b) Each original application and renewal application shall be
 41 accompanied by a fee of two hundred fifty dollars (\$250).

42 (c) An operator desiring to renew a license must submit an

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1 application to the licensing authority. The application for renewal
 2 must be filed not later than sixty (60) days before the license
 3 expires. The application for renewal shall be filed in triplicate with
 4 and dated by the authority. A copy of the application for renewal
 5 shall be distributed promptly by the licensing authority to the local
 6 law enforcement official and to the department of health. The
 7 application for renewal must contain information and data, given
 8 under oath or affirmation, as may be required by the licensing
 9 authority, but not less than the information contained in the
 10 original application.

11 (d) In addition to the renewal fee, a late penalty of fifty dollars
 12 (\$50) per day shall be assessed against an applicant that files for a
 13 renewal less than thirty (30) days before the license expires.

14 (e) If the local law enforcement official is aware of any
 15 information bearing on the operator's qualifications, the
 16 information must be filed in writing with the licensing authority
 17 not later than ten (10) days after the date of the application for
 18 renewal.

19 (f) If the application is denied, fifty percent (50%) of the fee
 20 shall be returned.

21 Sec. 25. (a) The public part of an adult oriented establishment
 22 may be open from noon to midnight.

23 (b) The public part of an adult oriented establishment shall be
 24 open to inspection at all reasonable times by the local law
 25 enforcement officials, the licensing authority, and the board of
 26 health.

27 (c) The operator shall maintain a register of all employees,
 28 showing the:

- 29 (1) name;
- 30 (2) aliases used by the employee, including performance
- 31 names and stage names;
- 32 (3) home address;
- 33 (4) age;
- 34 (5) birth date;
- 35 (6) sex;
- 36 (7) height;
- 37 (8) weight;
- 38 (9) color of hair and eyes;
- 39 (10) telephone number;
- 40 (11) Social Security number;
- 41 (12) driver's license number;
- 42 (13) date of employment and termination; and

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(14) duties;
of each employee and other information as may be required by the
licensing authority. The information concerning an employee must
be maintained in the register on the premises for three (3) years
after termination of the employee.

(d) At all reasonable times, the operator shall make the register
of employees immediately available for inspection by the licensing
authority, the local law enforcement official, and the department
of health upon demand.

(e) An act or omission by an employee constituting a violation
of this chapter is considered the act or omission of the operator if
the act or omission occurs:

(1) with the authorization, knowledge, or approval of the
operator; or

(2) as a result of the operator's negligent failure to supervise
the employee's conduct.

The operator is punishable for an act or omission in the same
manner as if the operator committed the act or caused the
omission.

(f) An operator is responsible for the conduct of all employees
while the employees are on the licensed premises. Any act or
omission of any employee constituting a violation of this chapter is
considered the act or omission of the operator for purposes of
determining whether the operator's license may be revoked,
suspended, or renewed.

(g) An employee of an adult oriented establishment shall not
allow a minor to loiter around or frequent the adult oriented
establishment or to view adult entertainment.

(h) Every adult oriented establishment must be physically
arranged so that the interior parts of the booths, cubicles, rooms,
or stalls where adult entertainment is provided are visible from the
common area of the premises. Visibility may not be blocked or
obscured by doors, curtains, partitions, drapes, or any other
obstruction.

(i) The operator of an adult oriented establishment shall provide
that any room or area used for the purpose of viewing adult
oriented motion pictures or other types of live adult entertainment
is readily accessible at all times and is continuously open to view in
its entirety.

(j) The license issued under this chapter must be displayed
conspicuously in the common area of the premises at all times.

(k) A sign must be displayed conspicuously in the common area



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of the premises and must read as follows:

"This adult oriented establishment is regulated by IC 24-4-13.

Employees are:

(1) Not permitted to engage in any type of sexual conduct.

(2) Not permitted to expose their sex organs.

(3) Not permitted to appear in a state of full nudity."

(l) The license shall be kept by an employee so that it is readily available for display immediately upon request of a customer, the authority, the local law enforcement official, the board of health, or any person designated by the authority.

(m) Not less than one (1) time per month, the operator shall permit the department of health to inspect the adult oriented establishment. The department of health shall prepare a report for the authority of all findings.

Sec. 26. (a) An operator, entertainer, or employee of an adult oriented establishment may not permit:

(1) sexual intercourse;

(2) oral copulation;

(3) anal copulation; or

(4) any other contact stimulation of the genitalia;

to be performed. This includes the extension of an offer to perform, performance on a patron, performance by employees or patrons, or the allowance of a patron to perform.

(b) An operator, entertainer, or employee of an adult oriented establishment may not encourage or permit any person upon the premises to touch, caress, or fondle the:

(1) breast;

(2) buttocks;

(3) anus; or

(4) genitals;

of any operator, entertainer, or employee.

(c) An entertainer, an employee, or a customer may not be permitted to have any physical contact with any other entertainer, employee, or customer on the premises during any performance.

(d) A performance by an entertainer, an employee, or a customer may occur only upon a stage that is:

(1) at least eighteen (18) inches above the immediate floor level; and

(2) removed at least six (6) feet from the next nearest entertainer, employee, or customer.

(e) An employee or entertainer, while on the premises of an adult oriented establishment, may not:

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- (1) engage in sexual intercourse;
- (2) engage in deviant sexual conduct;
- (3) appear in a state of nudity;
- (4) fondle the employee's or entertainer's own genitals; or
- (5) fondle the genitals of another.

(f) A license holder may not advertise that the license holder offers sexual stimulation, other than visual stimulation, or sexual gratification.

(g) A license holder may not display a sign or advertisement in public view that:

- (1) contains a source of illumination;
- (2) uses a picture, the silhouette, or any part of a silhouette of the:
 - (A) bare female breast;
 - (B) human genitals;
 - (C) human pubic region; or
 - (D) human buttocks; or
- (3) exceeds the size and height restrictions determined by the authority.

Sec. 27. (a) A person may not be an entertainer or employee in an adult oriented establishment without a valid permit issued by the licensing authority.

(b) An applicant for a permit must submit an application to the licensing authority. The application must be filed in triplicate with and dated by the licensing authority. A copy of the application shall be distributed promptly by the authority to the local law enforcement official and the department of health.

(c) The application for a permit must be upon a form provided by the licensing authority.

(d) An applicant for a permit shall furnish the following information under oath:

- (1) name;
- (2) aliases used by the employee, including performance names and stage names;
- (3) home address;
- (4) written proof that the applicant is at least eighteen (18) years of age;
- (5) birth date;
- (6) sex;
- (7) height;
- (8) weight;
- (9) color of hair and eyes;

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- (10) telephone number;
- (11) Social Security number;
- (12) driver's license number;
- (13) the adult oriented establishment or similar business permit history of the applicant, including whether the person, in previously operating in any city or state under a permit, has had the permit revoked or suspended, the reason for the revocation or suspension of the permit, and the business activity or occupation subject to the suspension or revocation; and
- (14) any conviction for a specified criminal act.

The applicant also shall furnish two (2) color passport photographs at least two (2) inches by two (2) inches of the applicant and provide a statement by the applicant that the applicant is familiar with and in compliance with the provisions of this chapter.

(e) Not later than ten (10) days after receiving the results of the investigation conducted by the licensing authority or the local law enforcement official, the authority shall notify the applicant that the applicant's application is granted, denied, or held for further investigation. Any additional investigation may not exceed thirty (30) days from the date of notification unless otherwise agreed to by the applicant. Upon the conclusion of additional investigations, the licensing authority shall advise the applicant in writing whether the application is granted or denied.

(f) If an additional investigation is held, after thirty (30) days, the applicant shall be permitted to begin operating the business for which the license is sought, unless or until the licensing authority or its authorized representative notifies the applicant of a denial of the application and states the reasons for that denial.

(g) Any of the following constitutes an admission by the applicant that the applicant is ineligible for a license:

- (1) Failure or refusal of the applicant to give any information relevant to the investigation of the application.
- (2) The applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application.
- (3) The applicant's refusal to submit to or cooperate with any investigation required by this chapter.

(h) An admission by the applicant is grounds for the authority to deny a license.

Sec. 28. (a) A permit issued under this chapter:

- (1) is valid for one (1) year from the date of issue, unless

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1 revoked before expiration; and

2 (2) must be renewed before an entertainer is allowed to
3 provide entertainment in an adult oriented establishment in
4 the following calendar year.

5 (b) Each original permit application and renewal application
6 must be accompanied by a fee of seventy-five dollars (\$75).

7 (c) A person desiring to renew a permit must submit an
8 application to the licensing authority. The application for renewal
9 must be filed not later than thirty (30) days before the permit
10 expires. The application for renewal must be filed in triplicate with
11 and dated by the licensing authority. A copy of the application for
12 renewal shall be distributed promptly by the licensing authority to
13 the local law enforcement official and to the department of health.
14 The application for renewal must contain information and data,
15 given under oath or affirmation, as may be required by the
16 licensing authority, but not less than the information contained in
17 the original application.

18 (d) In addition to the renewal fee, a late penalty of five dollars
19 (\$5) shall be assessed against an applicant who files for renewal less
20 than thirty (30) days before the permit expires.

21 (e) If the application is denied, fifty percent (50%) of the fee
22 shall be returned.

23 (f) If the local law enforcement official is aware of any
24 information bearing on the entertainer's qualifications, that
25 information shall be filed in writing with the licensing authority
26 not later than ten (10) days after the date of the application for
27 renewal.

28 (g) An application for renewal of a permit shall be handled,
29 investigated, and approved or denied within the same periods as
30 those established for original permit application.

31 (h) If a permit renewal application is denied, the applicant has
32 all rights of appeal to the licensing authority as set forth for a
33 license issued under this chapter.

34 Sec. 29. (a) To receive a permit as an entertainer or employee,
35 an applicant must meet the following standards:

36 (1) The applicant must be at least eighteen (18) years of age.

37 (2) The applicant may not have had a permit revoked within
38 two (2) years immediately preceding the date of the
39 application.

40 (3) The applicant may not have been convicted of a specified
41 criminal act for which:

42 (A) less than two (2) years has elapsed since the date of

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conviction if the conviction is for a misdemeanor offense;
 (B) less than five (5) years has elapsed since the date of
 conviction if the conviction is for a felony offense; or
 (C) less than five (5) years has elapsed since the date of
 conviction for two (2) or more misdemeanor offenses
 occurring within any twelve (12) month period.

The fact that a conviction is being appealed has no effect on
 disqualification of the applicant.

(b) An applicant who has been convicted of a specified criminal
 activity may not be denied a permit based on that conviction after
 the period required in subsection (a)(3) has elapsed.

(c) A permit may not be issued until the licensing authority or
 the local law enforcement official has investigated the applicant's
 qualifications to receive a permit. The results of the investigation
 shall be filed in writing with the licensing authority not later than
 thirty (30) days after the date of the application.

Sec. 30. (a) An operator who violates an adult entertainment
 license provision of this chapter shall pay a civil penalty of one
 thousand dollars (\$1,000) per violation per day of the violation.

(b) An operator who violates an adult oriented establishment
 license provision of this chapter five (5) times in one (1) year shall
 have the license revoked. An operator whose license is revoked may
 not reapply for a license for five (5) years.

(c) Each violation of this chapter is a separate offense, and any
 violation continuing for more than one (1) hour shall be considered
 a separate offense for each hour of violation.

Sec. 31. (a) A person who violates an adult oriented
 establishment permit provision of this chapter shall pay a civil
 penalty of one hundred fifty dollars (\$150) per violation per day of
 the violation.

(b) A person who violates an adult oriented establishment
 permit provision of this chapter five (5) times in one (1) year shall
 have the permit revoked. A person whose permit is revoked may
 not reapply for a permit for five (5) years.

(c) Each violation of this chapter is a separate offense, and any
 violation continuing for more than one (1) hour shall be considered
 a separate offense for each hour of violation.

Sec. 32. (a) Fees collected for licenses under section 24 of this
 chapter and civil penalties collected under section 30 of this
 chapter shall be divided as follows:

(1) Thirty-three and thirty-three hundredths percent
 (33.33%) to the licensing authority having jurisdiction over

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1 the adult entertainment.

2 (2) Thirty-three and thirty-four hundredths percent (33.34%)
3 to the local law enforcement agency having jurisdiction over
4 the adult entertainment.

5 (3) Thirty-three and thirty-three hundredths percent
6 (33.33%) to the department of health.

7 (b) Fees collected for permits under section 28 of this chapter
8 and civil penalties collected under section 31 of this chapter shall
9 be divided as follows:

10 (1) Sixty percent (60%) to the licensing authority having
11 jurisdiction over the adult entertainment.

12 (2) Forty percent (40%) to the department of health.

13 SECTION 3. [EFFECTIVE JULY 1, 2003] Notwithstanding
14 IC 24-4-13, as added by this act, an adult oriented establishment
15 existing and in operation on July 1, 2003, must submit an
16 application for a license not later than December 31, 2003. If a
17 license is not approved, the existing adult oriented establishment
18 must cease to operate.

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